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No.....

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

DIRECTORY SERVICE COMPANY OF COLORADO, INC. and FRANCES A. ANDERSON,

Petitioners,

v.

ROCKFORD MAP PUBLISHERS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RULE 28.1 STATEMENT

Respondent, Rockford Map Publishers, Inc., has no parent companies, subsidiaries or affiliates.

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INTRODUCTION

The Petition for Writ of Certiorari in this case is without merit because the decision of the United States Court of Appeals for the Seventh Circuit is extremely well-founded in law, is not in any way inconsistent with the decisions of other circuits, and reaches the only conclusion possible under the factual circumstances which exist.

In short, Rockford Map Publishers, Inc. ("RMP") converted hundreds of written legal descriptions as exist-

ing on the tax rolls of Ford County, Illinois into a pictorial portrayal of the shape, size and geographic location of each of the rural properties involved. The transformation of the written legal descriptions into a graphic depiction resulted in an original pictorial or graphic work and constituted an original arrangement of the data contained in the legal descriptions. Accordingly, petitioners' Question No. 1 (Petition, p. i) entirely begs the issue.

Directory Service Company of Colorado, Inc. ("DSC") did not make the same transformation. Instead, DSC's agent merely did some editorial work on RMP's transformation to make it more current and then DSC adopted it as its own. DSC did not, therefore, "independently" derive "its own facts" and thus petitioners' Question No. 3 (Petition, p. i) starts with a premise which is not supported by fact.

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THE COPYRIGHT STATUTE

Purportedly in the "interest of brevity", pages 2 and 3 of the Petition remarkably omit two of the most pertinent sections of the copyright statute, namely, 17 U.S.C. § 102(a) and 17 U.S.C. § 103(a). Thus, we have reproduced the pertinent portions of those sections below:

17 U.S.C. § 102(a)

> "Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression . . . from which they can be perceived, reproduced, or otherwise communicated . . . . Works of authorship include the following categories: (1) literary works; . . . (5) pictorial, graphic, and sculptural works . . . ."

17 U.S.C. § 103(a)

> "The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully."

———o———

THE FACTS

The facts involved in this case are accurately set forth at pages 1 to 3 of the Seventh Circuit's decision appended to the Petition.

We merely emphasize that the publication of the DSC 1983 Ford County book followed the publication of the RMP 1983 Ford County book by only a few months. Thus, with the overwhelming majority of parcels, the information published by RMP was current. In the overwhelming majority of cases, therefore, DSC's agent merely made a green check mark indicating the current state of the RMP work. In each of those cases, she was saved the time of writing down the name of the property owner and the number of acres owned and, most importantly of all, she was not required to use any skill in determining and drawing out the shape, size and geographical location of the parcel.

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DISCUSSION

I. The Validity of the Copyright

Under 17 U.S.C. §§ 101, 102(a) and 103(a), copyright protection subsists in original works of authorship including pictorial and graphic works and also including compilations formed by preexisting data arranged such that the work as a whole constitutes an original work of authorship.

The RMP work was an original work of authorship because, prior to the publication by DSC, the only current Ford County ownership data that was graphically illustrated and arranged in the form of the RMP data was the ownership data in the 1983 RMP maps themselves. RMP did not simply copy existing data. Instead, it transformed written legal descriptions of tax rolls into graphic or pictorial portrayals of parcels of land. The raw data for making this transformation was available to everyone from the tax rolls but only RMP devoted the time and applied the skill required to convert the data into a graphic depiction. In addition to being an original pictorial or graphic work under 17 U.S.C. § 102(a), RMP's work is an original arrangement of data and thus is protected as a compilation by 17 U.S.C. 103(a).

While RMP's compilation is copyrightable under the industrious collection principle as pronounced in *Jeweler's Circular Publishing Co. v. Keystone Publishing Co.*, 281 F. 83 (2nd Cir. 1922), cert. denied, 259 U.S. 581 (1922) and in *Schroeder v. William Morrow & Co.*, 566 F.2d 3 (7th Cir. 1977), RMP's work rises far above the level of industrious collection. RMP not only used the "sweat of its brow" to compile the land ownership data but it also em-

ployed trained researchers who were skilled in reading legal descriptions and accurately transforming such descriptions into pictorial depictions. This transformation and arrangement of information was clearly recognized by the Seventh Circuit in this case as providing the basis for copyright protection and is entirely consistent with and indeed exceeds the originality requirements of *Eckes v. Card Prices Update*, 736 F.2d 859 (2nd Cir. 1984) where a directory of baseball cards was held to be copyrightable and of *Southern Bell Telephone & Telegraph Co. v. Associated Telephone Directory Publishers*, 756 F.2d 801 (11th Cir. 1985) where a telephone directory was held to be copyrightable on the basis of the original arrangement of materials. In *Miller v. Universal City Studios, Inc.*, 650 F.2d 1365 (5th Cir. 1981) cited by petitioners, the 5th Circuit was dealing with a book based on historical fact, not with a compilation or directory.

II. The Question of Fair Use

The fact that the DSC maps incorporate 54 of the 56 trap or bogus middle initials intentionally planted in the RMP maps is compelling evidence that DSC primarily derived its data directly from the RMP maps and not from public records in the Ford County Courthouse. Based in part on this evidence, the lower courts found that DSC's agent did not conduct independent research but instead engaged in actual copying. DSC not only failed to take the care to confirm the accuracy of the RMP maps; it copied virtually all of the inaccuracies. This is not the type of use condoned by the statement in *Moffatt & Paige Ltd. v. Gill & Sons Ltd.*, 86 L.T.R. (n.s.) 465 (C.A. 1902) cited by petitioner, it is not the starting point condoned by

the 2nd Circuit and it is not a fair use. Although petitioners attempt to rely on *Rosemont Enterprises, Inc. v. Random House, Inc.*, 366 F.2d 303 (2nd Cir. 1966) in support of their position, the court in *Rosemont* emphasized that:

> "The fair use privilege is based on the concept of reasonableness and extensive verbatim copying or paraphrasing of material set down by another cannot satisfy that standard."

—o—

CONCLUSION

The Seventh Circuit's decision on the question of copyrightability rests primarily on a holding of originality and its decision on the question of fair use rests primarily on a holding of copying and lack of independent production. These holdings are in strict accord with the decisions of the other circuits and with the copyright law as prescribed by U.S.C. Title 17.

Respectfully submitted,

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